

Date of decision: 16/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KOHINOOR FLOUR MILLS

VS

DISTRICT SUPPLY OFFICER

Appearance: MRS DT SHAH for Petitioner
MS HARSHA DEVANI for the respondents

Coram : MR.JUSTICE R.K.ABICHANDANI

ORAL JUDGEMENT

Rule. The learned Assistant Government Pleader waives service of the Rule on behalf of the respondents. At the instance of both the sides, the matter is taken up for final disposal. The petitioner who is running a flour mill challenges the orders of confiscating 10% of the quantity of wheat seized which came to 26.4 quintals, valued at Rs. 8,316/-. The allegation which was levelled against the petitioner in the show cause notice dated 19.1.1991 was that the petitioner had not declared the stock on the notice board; he did not maintain the stock register; that there was discrepancy in the opening stock, and, further that the shortfall of 88 quintals of wheat was illegally disposed of by the petitioner.

It was contended on behalf of the petitioner that there is an allegation in the show cause notice that the petitioner had

violated the provisions of the Gujarat Essential Articles Order 1981. The item "wheat" was deleted from that order by Order of the Government dated 27th October, 1986 published in the Government Gazette Part IV-A dated 27th October, 1986. On this basis it was further argued that since licence was not required for in dealing wheat under the provisions of the Gujarat Essential Articles Order 1981, the petitioner was not a dealer even for the purpose of Gujarat Essential Articles Order, 1977 and therefore, no action could have been taken against the petitioner under either of these two Orders.

It appears from the impugned orders that the authorities have not directed themselves to the fact that item wheat has been deleted from the Schedule to the Gujarat Essential Articles Order, 1981. They have also not considered the provisions of the Gujarat Essential Articles Dealers' Order, 1977 more particularly, the aspect as to which clauses of that Order were attracted in view of the definition of "dealer" given in clause 2(4) thereof. In view of this, the impugned orders cannot be sustained and are hereby set aside. The District Supply Officer, Baroda - respondent No.1 herein, is directed to consider the matter afresh and take a decision in accordance with law. This should be done expeditiously, preferably within one month from the date on which writ of this order is received by the respondent No.1. Rule is made absolute accordingly with no order as to costs.
